



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220321-0075]

RIN 0648-BK84

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna and Silky Shark in the Eastern Pacific Ocean for 2022 and Beyond

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act (TCA) of 1950, as amended, to implement Resolution C-21-04 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2022-2024*) and Resolution C-21-06 (*Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis), for the Years 2022 and 2023*), which were adopted at the Resumed 98th Meeting of the Inter-American Tropical Tuna Commission (IATTC) in October 2021. This proposed rule implements the C-21-04 fishing management measures for tropical tuna (*i.e.*, bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) in the eastern Pacific Ocean (EPO). The fishing restrictions would apply to purse seine vessels of class sizes 4-6 (carrying capacity of 182 metric tons (mt) or greater) and longline vessels greater than 24 meters (m) in overall length that fish for tropical tuna in the EPO. To implement Resolution C-21-06, which extended the previous IATTC resolution on silky shark for 2 years, NMFS is proposing for existing regulations on silky shark to continue in effect with no proposed amendments. This proposed rule is necessary for the conservation of tropical tuna stocks

and silky shark in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0136, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2021-0136” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2021-0136” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of supporting documents that were prepared for this proposed rule, including the regulatory impact review (RIR) are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2021-0136, or contact Rachael

Wadsworth, NMFS WCR SFD, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, or *WCR.HMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS WCR, at (206) 561-3457.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (1949 Convention). In 2003, the IATTC updated the 1949 Convention through the adoption of the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: *https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/IATTC_Antigua_Convention%20Jun%202003.pdf*.

The IATTC consists of 21 member nations and 5 cooperating non-member nations. The IATTC facilitates scientific research, as well as the conservation and management, of tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC under the Tuna Conventions Act of 1950, as amended, 16 U.S.C. 951 *et seq.* (Pub. L. 114-81) (TCA). The TCA directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC Resolutions on Tropical Tuna Conservation and Silky Shark

The IATTC held multiple annual meetings, virtually, in June, August, and October 2021. The IATTC ultimately adopted a new tropical tuna Resolution, Resolution C-21-04 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2022-2024*), at the Resumed 98th Meeting of the IATTC in October 2021. The IATTC also adopted Resolution C-21-06 (*Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis), for the Years 2022 and 2023*). This Resolution is a two-year extension of the previous resolution on silky shark, which was set to expire at the end of the 2021 calendar year.

Many of the provisions of the newly adopted Resolution C-21-04 are identical in content to those contained in the previous IATTC resolutions on tropical tuna management that were in place from 2018-2021 (C-20-06; *Tropical Tunas Conservation in the EPO during 2021, pursuant to RES C-20-05*; and C-17-02; *Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean During 2018-2020*).

Resolution C-21-04 continues to include provisions for a 72-day EPO fishing closure period for purse seine vessels, exemptions from that closure period due to *force majeure*, a 31-day time/area EPO fishing closure period for purse seine vessels, catch limits of

bigeye tuna caught in the EPO for longline vessels greater than 24 m in overall length, catch limit transfer requirements for bigeye tuna, a requirement that all tropical tuna be retained and landed (with some exceptions), and restrictions on the use and design of fish aggregating devices (FADs).

In addition to the existing measures, Resolution C-21-04 contains new measures not included in previous tropical tuna resolutions. These include a system of additional closure days for purse seine vessels that exceed an annual catch level of 1,200 mt for bigeye tuna and amendments to provisions related to *force majeure* exemptions from the 72-day closure period requirement. The Resolution also includes several new restrictions on FADs that include a gradual reduction in the number of active FADs allowed, additional reporting requirements for satellite buoys including activations and deactivations, and specification of circumstances where activations and deactivations are allowed. The Resolution also includes requirements for reporting cannery data and Vessel Monitoring Systems (VMS) data to the IATTC.

Proposed Regulations

This proposed rule would be implemented under the TCA (16 U.S.C. 951 *et seq.*) and proposes changes to part 300, subpart C of title 50 of the Code of Federal Regulations (CFR). Although Resolutions C-21-04 and C-21-06 are in effect through 2024 and 2023 respectively, NMFS does not intend for the proposed regulations to expire concurrently with the Resolutions. Instead, because the IATTC will likely continue to adopt similar conservation and management measures upon expiration of those resolutions, and to avoid a lapse in the management of the fishery that may occur between expiration of the proposed regulations and implementation of new measures adopted by the IATTC, the proposed regulations would remain in effect until they are amended or replaced.

The TCA gives NMFS the authority to ...promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention and this chapter, including recommendations and decisions adopted by the Commission. 16 U.S.C. 955(a). In past years, NMFS has implemented IATTC resolutions for specific calendar years, and this approach has led to lapses in management in the affected fisheries in subsequent years. Given the time-consuming nature of the U.S. domestic rulemaking process, combined with the increasingly frequent delayed adoption of IATTC resolutions, implementing domestic measures that do not expire until new measures are in place is necessary to carry out the United States' international obligations under the Antigua Convention and the TCA because it will ensure there is no lapse in management of the tropical tuna fishery or silky shark measures in the EPO.

Thus, unless a date is specified in the text of the regulation, the proposed regulations would remain in effect until they are amended or replaced. NMFS does intend to publish proposed and final rules to implement new resolutions adopted by the IATTC as expeditiously as possible; however, this approach would allow existing regulations to remain in force and prevent any lapse in regulatory coverage caused by expirations. Because the IATTC adopted Resolution C-21-04 as a three-year conservation and management measure (2022-2024), the supporting analyses for this rule (discussed later in the Classification section) cover a three-year time period, with the understanding that these analyses would need to be supplemented should the measures remain in effect for more than three years. Likewise, the supporting analyses for Resolution C-21-06, which was adopted as a two-year conservation measure (2022-2023), cover a two-year period, with the understanding that these analyses would also need to be supplemented should the measures remain in effect for more than two years.

Tuna Conservation Measures for 2022 and beyond

The proposed rule would implement the provisions of Resolution C-21-04 and applies to U.S. commercial fishing vessels using purse seine and longline gear to catch tropical tuna in the IATTC Convention Area. Several provisions included in Resolution C-21-04 do not need to be implemented through this proposed rule because they were already codified in regulations and are not set to expire. The continuing and new tropical tuna provisions are described below.

First, this proposed rule would maintain a 750 mt catch limit on bigeye tuna caught by longline vessels greater than 24 m in overall length in the IATTC Convention Area (50 CFR 300.25(a)(2)). Second, the proposed rule would maintain the prohibition on purse seine vessels of class size 4 to 6 (*i.e.*, vessels with a carrying capacity greater than 182 mt) from fishing for tropical tuna in the IATTC Convention Area for a period of 72 days (50 CFR 300.25(e)(1)). Specifically, vessels will continue to be prohibited from fishing in the EPO for 72 days during one of the following two periods: (1) from July 29 to October 8; or (2) from November 9 to January 19 of the following year (50 CFR 300.25(e)(1)(i) and (ii)). Third, the proposed rule would maintain a closure period (*i.e.*, Corralito closure) for the purse seine fishery for tropical tuna within the area of 96° and 110° W and between 4° N and 3° S from 0000 hours on October 9 to 2400 hours on November 8 (50 CFR 300.25(e)(5)). The three regulations described in this paragraph would be amended by this proposed rule solely to specify that they apply beyond the 2021 calendar year and would no longer be linked to specific years in the regulations. Due to the addition of new requirements in § 300.25(e) (discussed later in this section), the closure requirement described in § 300.25(e)(5) would also be moved to § 300.25(e)(6).

This proposed rule would also continue, for 2022 and beyond, several other regulations that were in effect in 2021 but that did not specify in the regulatory text the calendar years to which they apply. Therefore, under this proposed rule, those regulations

would continue to be in effect with no changes or with minor clarifying revisions, as indicated below:

- Provisions related to transferring longline catch limits for bigeye tuna between IATTC members (50 CFR 300.25(a)(5)).
- Provisions related to selection of a 72-day closure period (50 CFR 300.25(e)(2) and (3)). Due to the addition of new regulations in § 300.25(e), these provisions would be moved from § 300.25(e)(2) and (3) to § 300.25(e)(3) and (4), and they would also include minor non-substantive clarifying revisions.
- Provisions related to exemptions from the 72-day closure period requirement due to *force majeure* (50 CFR 300.25(e)(4)). Due to the addition of new requirements in § 300.25(e), these provisions would be moved from § 300.25(e)(4) to § 300.25(e)(5). The regulation would also include non-substantive revisions intended to clarify eligibility for a *force majeure* exemption.
- Requirements related to stowing gear during time/area closure periods (50 CFR 300.25(e)(6)). Due to the addition of new requirements in § 300.25(e), this requirement would be moved from § 300.25(e)(6) to § 300.25(e)(7).
- A requirement for all tropical tuna to be retained on board and landed (with certain exceptions) (50 CFR 300.27(a)).
- A number of restrictions related to FADs for purse seine vessels in the IATTC Convention Area (50 CFR 300.22(a)(3); 50 CFR 300.28). Due to proposed changes to § 300.22, the FAD restrictions in § 300.22(a)(3) would be moved to § 300.22(c). The regulation would include some non-substantive revisions intended to clarify the existing reporting requirements for Active FADs.
- The prohibitions against failing to comply with gear-stowing restrictions, retention requirements, and FAD-related restrictions (50 CFR 300.24(e), (f), (m), (nn), (oo), and (pp)).

This proposed rule would implement several new fishing restrictions on purse seine vessels, in accordance with Resolution C-21-04. The new restrictions include a system of additional closure days for class 4-6 purse seine vessels that exceed specified annual catch levels for bigeye tuna (*see* proposed 50 CFR 300.25(e)(2)). These catch levels would begin at 1,200 mt of bigeye tuna with 10 additional closure days and would increase incrementally by 300 mt and 3 additional closure days beyond that level. In 2023 and 2024, U.S. purse seine vessels that exceed a certain annual catch level of bigeye tuna would be required to increase the number of closure days they observe in the following year, as specified in Table 1.

Table 1. Bigeye tuna catch levels and corresponding additional closure days.

Catch level (mt) exceeded	Additional closure days observed
1,200	10
1,500	13
1,800	16
2,100	19
2,400	22

In addition, the proposed rule would implement minor revisions to *force majeure* exemptions from the 72-day closure period requirement to clarify when to submit information to NMFS and that the exemption does not apply to the additional closure days (*see* proposed 50 CFR 300.25(e)(5)(i)-(vi)).

The proposed rule would also implement several new restrictions on FADs. These include proposed changes to 50 CFR 300.28(c) to provide for a gradual reduction in the number of active FADs allowed from 2022 to 2024 and beyond, additional reporting requirements for satellite buoys, including specific information about activations and deactivations, in proposed 50 CFR 300.22(c)(3), and (4), and specification of

circumstances where activations and deactivations are allowed in the proposed changes to 50 CFR 300.28(d) and (e). The proposed rule would also implement new requirements for vessel owners or operators to report cannery data directly to the IATTC, and to also make the data available to NMFS upon request, no later than 10 days after completion of unloading and the last day of grading by size (*see* proposed 50 CFR 300.22(d)). Cannery data reported to NMFS would be treated as confidential in accordance with NOAA Administrative Order 216-100 for confidential fisheries data, and data provided from NMFS to IATTC or directly to IATTC from vessel owners or operators would be kept confidential according to IATTC confidentiality standards. Further instructions about reporting would be included in a compliance guide available with the final rule. The proposed changes to 50 CFR 300.21 would add definitions for “activation of a satellite buoy,” “deactivation of a satellite buoy,” “reactivation of a satellite buoy,” “signal loss,” and would revise the “Active FAD” definition. The corresponding prohibitions listed in proposed 50 CFR 300.24 are also updated accordingly. Finally, this action also notifies the public that, consistent with the VMS reporting requirements specified in paragraph 25 of Resolution C-21-04 and beginning on January 1, 2023. NMFS would report VMS data, which vessels are currently required to submit under 50 CFR 300.26, to the IATTC. VMS data reported from NMFS to the IATTC would be kept confidential according to IATTC confidentiality standards.

In addition to implementing the measures in the tropical tuna resolution, the proposed rule would also slightly reorganize 50 CFR part 300, subpart C and clarify existing regulations pertaining to the IATTC Regional Vessel Register (RVR). Specifically, the regulations in 50 CFR 300.23, “Persons and vessels exempted,” would be moved to 50 CFR 300.20, “Purpose and scope,” and the regulations pertaining to the RVR, currently found in 50 CFR 300.22(b), would be moved to 50 CFR 300.23, which would be renamed “IATTC Regional Vessel Register.” This change is intended to

provide easier access to the RVR regulations. The RVR regulations in 50 CFR 300.23 would also include some minor housekeeping edits for clarifying purposes.

Silky shark regulations

The IATTC also extended existing conservation measures for silky shark without change (*see* Resolution C-21-06). Therefore, under this proposed rule the silky shark regulations in 50 CFR 300.27 (e) and (f) would continue to be in effect without change. Those regulations prohibit U.S. purse seine and longline vessels from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark, with the exception of silky shark caught by purse seine that is not seen during fishing operations and is delivered into the vessel hold. Even though the text of those regulations will remain unchanged, NMFS is proposing to change the title of § 300.27(e) to make clear that paragraph applies to both purse seine and longline vessels.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the TCA and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule includes changes to collection of information requirements for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements for longline vessels would continue to apply under OMB Control Number 0648-0214 (*Pacific Islands Region Logbook Family of Forms*). NMFS is amending the supporting statement for the *West Coast Region Pacific Tuna Fisheries Logbook, Fish Aggregating Device Form, and Observer Safety Reporting*, Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (OMB Control No.

0648-0148) to include the new data collection requirements for deactivations and reactivations of satellite buoys associated with FADs and for cannery data as described in the preamble. NMFS estimates that the public reporting burden for the collection of information for satellite buoys associated with FADs will average 3 minutes per form and average 5 minutes for cannery data, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS requests any comments on the addition of the FAD buoy and cannery data collection to the PRA package, including whether the paperwork would unnecessarily burden any vessel owners and operators. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:
<https://www.reginfo.gov/public/do/PRAMain>.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy

of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

The action proposed would implement provisions of Resolution C-21-04 and C-21-06. This action would apply to U.S. commercial fishing vessels using longline and purse seine gear and fishing for tropical tuna stocks in the IATTC Convention Area.

There are three objectives of the proposed action: (1) manage U.S. fishing activities for tropical tuna in the EPO for the benefit of maximizing harvests while avoiding overfishing, (2) maintain mitigation measures for silky shark, and (3) fulfill the international obligations of the United States as a member of the IATTC.

As described under “Proposed Regulations” several regulations are already in place and would not be substantively amended through this rulemaking. Without the proposed action, U.S. fisheries would be allowed to target tropical tuna in the Convention Area without restrictions (except for existing permit requirements). This may contribute to overfishing conditions of tuna resources and fewer conservation measures for silk sharks. Managing stocks at or above levels able to produce maximum sustainable yield is intended to benefit both the stocks and the fisheries in the EPO by allowing for the production of the stocks to be maintained at levels where the largest catch can be taken over time. The implementation of Resolution C-21-04 and C-21-06 through the proposed action will result in the sharing of sustainable benefits from Pacific tuna fishery resources among the IATTC member and cooperating non-member countries. The entities directly affected by the actions of this proposed rule are: (1) U.S. purse seine vessels that fish for tuna or tuna-like species in the IATTC Convention Area, and (2) U.S. longline vessels greater than 24 meters in overall length that catch bigeye tuna in the IATTC Convention Area.

For Regulatory Flexibility Act (RFA) compliance purposes only, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) (80 FR 81194, Dec. 29, 2015). The \$11 million standard became effective on July 1, 2016 and replaced previous U.S. Small Business Administration small business standards for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

NMFS prepared analyses for this regulatory action based on these size standards. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. Under these size standards, the U.S. purse seine vessels regulated by this action include both large and small businesses. The longline vessels this action applies to are considered to be small businesses.

U.S. Purse Seine Vessels Fishing in the IATTC Convention Area

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) large purse seine vessels (class size 6; greater than 363 mt carrying capacity) that typically have been based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine vessels with smaller fish hold volumes (size class 2-3; between 46-181 mt carrying capacity) that are based on the U.S. West Coast. Although Resolution C-21-04 and the proposed regulations include restrictions for class size 4-5 (182-363 mt carrying capacity) purse seine vessels, there are currently no U.S. vessels of class sizes 4-5 registered to fish in the IATTC Convention Area, nor have there been in the past ten years. Therefore, the proposed regulations for class size 4-5 purse seine vessels are not expected to have any impact on U.S. vessel owners or operators.

As of January 2022, there are 15 class size 6 U.S. purse seine vessels registered to fish in the IATTC Convention Area. From 2005 through 2014, three or fewer class 6

purse seine vessels fished in the Convention Area. From 2015 and onward, more than three purse seine vessels fished in the Convention Area. The U.S. class size 6 purse seine vessels target skipjack tuna by fishing on floating objects and unassociated sets; they also catch and retain yellowfin and bigeye tuna. In addition, one U.S. class 6 purse seine vessel has permission to fish on dolphins in 2022 and may be eligible to fish on dolphins in the future. This vessel could also fish on floating objects and unassociated sets as it has done in the past. Prior to 2017, no U.S. purse seine vessel had fished on dolphins in over 10 years.

For large purse seine vessels that fished exclusively in the EPO, ex-vessel price information is not available to NMFS because these vessels did not land on the U.S. West Coast, and the cannery receipts are not available through the IATTC. However, Regional Purse Seine Logbook (RPL) data from NMFS' Pacific Islands Fisheries Science Center (PIFSC), and observer data from the IATTC may be used as a proxy for fish landings by large U.S. purse seiners, in lieu of cannery receipts. Because neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, NMFS applied indicative regional cannery prices—as approximations of ex-vessel prices—to annual catches of individual vessels obtained from RPLs and IATTC observer data, to estimate the vessels' annual receipts. Indicative regional cannery prices are available through 2020 (developed by the Pacific Islands Forum Fisheries Agency; available at <https://www.ffa.int/node/425>). NMFS estimated vessels' annual receipts during 2019-2020. Using this approach, NMFS estimates that, among the affected vessels, the range in annual average receipts in 2019-2020 was \$400,000 to \$15 million with an average of approximately \$8 million.

NMFS estimates the number of affected U.S. purse seine vessels using the number with Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsements, which are the NMFS-issued authorizations required for a vessel to fish

commercially for highly migratory species (HMS) on the high seas in the WCPFC Convention Area. As of January 2021, the number of U.S. purse seine vessels with WCPFC Area Endorsements was 14. Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that over half of the vessels in the purse seine fleet are considered to be small entities for purposes of the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11 million.

U.S. Longline Vessels that Fish in the IATTC Convention Area

As of January 2021, the IATTC Regional Vessel Register lists 149 U.S. longline vessels that have the option to fish in the IATTC Convention Area, 35 of which are large-scale longline vessels (*i.e.*, greater than 24 m in overall length). The majority of these longline vessels have Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13). Under the Hawaii longline limited access program, no more than 164 permits may be issued. The Hawaii longline fisheries include a tuna-targeting (including bigeye tuna) deep-set fishery and swordfish-targeting shallow set fishery. Additionally, there are U.S. longline vessels based on the U.S. West Coast, some of which operate under the Pacific Highly Migratory Species (HMS) permit and high seas permits. U.S. West Coast-based longline vessels operating under the Pacific HMS permit fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast exclusive economic zone.

There have been fewer than three U.S. West Coast-based vessels operating under the HMS permit since 2005; therefore, landings and ex-vessel revenue information is not disclosed. However, the number of Hawaii-permitted longline vessels that have landed in U.S. West Coast ports has increased from one vessel in 2006 to 12 vessels in 2020. In 2020, 837 mt of HMS (excluding striped marlin, pelagic thresher shark, and bigeye

thresher shark) were landed in West Coast ports by Hawaii permitted longline vessels with a total ex-vessel revenue of about \$4.7 million. The average ex-vessel revenue for each vessel is approximately \$393,000. This is well below the \$11 million threshold for finfish harvesting businesses.

Economic Impacts

The proposed action is not expected to have a significant adverse economic impact on the profitability of a substantial number of small entities or a disproportionate economic effect on small entities relative to large entities. The entities impacted by the action related to purse seine vessels are considered to include both large and small businesses, and the entities impacted by the action related to longline vessels are considered to be small businesses. All of the measures in the Resolution on silky shark have been in place for years and therefore make no changes to current requirements. The majority of the provisions in the tropical tuna Resolution maintain purse seine regulations that have been in place for years and are therefore routine for the purse seine fleet. However, as described above, there are some new provisions included in the new tropical tuna Resolution. The proposed changes to the 2022 regulations to implement these new provisions, and the expected economic effects of these changes, are discussed in detail below.

Additional closure days: The proposed action would add 10 closure days for purse seine vessels that catch more than 1,200 mt of bigeye tuna, and would add 3 additional closure days for every additional 300 mt caught beyond the 1,200 mt. In reviewing catch levels for U.S. purse seine vessels from 2017-2020, only one U.S. vessel caught more than 1,200 mt in a single year. Thus, it is not expected that many, if any, U.S. vessels will need to adhere to additional closure days. For vessels that may need to observe additional closure days, the majority of vessels have the option to fish in the WCPO, pending closures in the WCPFC Convention Area.

FAD limits and buoy restrictions: With respect to limits on active FADs, all large U.S. purse seine vessels currently on the IATTC Regional Vessel Register have a well volume of 1,200 m³ or more. Therefore, the limits of 400 and 340 active FADs per large U.S. purse seine vessel would apply in 2022 and beyond, respectively. According to 2018-2020 purse seine effort data provided by IATTC scientific staff, the average number of active FADs per U.S. vessel is approximately 90 and the maximum number per vessel is 271. Thus, these proposed regulations are not expected to reduce the number of active FADs any U.S. purse seine vessel has in the water. As a result, these measures are not expected to reduce the profitability of the fishery, and no disproportionate impacts between small and large businesses are expected. The proposed action to impose restrictions on buoy deactivations and reactivations are not expected to change the fishing behavior of the U.S. fleet. In addition, although there are additional reporting requirements for active FADs, deactivations, and reactivations, vessel operators are already expected to be collecting the necessary information from satellite companies as part of current operations, and therefore reporting this additional information is not expected to impose an additional burden that would reduce profitability.

Reporting requirements: The proposed action would also implement requirements for reporting cannery data to the IATTC and making data available to NMFS upon request, as well as requirements for NMFS to report VMS data to the IATTC beginning in 2023. Cannery data is already collected by purse seine vessel owners as a part of current operations. Vessel owners would not need to change any reporting requirements for VMS data because data is already provided to NMFS and NMFS would provide to IATTC. Therefore, neither of these reporting requirements are expected to reduce the profitability of the fishery or have disproportionate impacts between small and large businesses.

Force Majeure: The proposed action would make minor revisions to *force majeure* regulations for consistency with the Resolution and for clarification purposes. For example, the revisions would clarify that U.S. vessel managers send NMFS requests “no later than 20 calendar days after the end of the period of inactivity due to *force majeure*,” versus the existing “within 20 calendar days after the vessel has been unable to proceed to sea for 72 days.” This would give vessels more flexibility, consistent with the Resolution, on the timing of when they submit their requests. The proposed action would also make minor edits such as updating contact information for *force majeure* requests and clarifying that *force majeure* does not apply to additional closure days for exceeding bigeye tuna catch levels. Since 2013, when the *force majeure* provisions first went into effect, the United States has requested *force majeure* exemptions five times. Because U.S. *force majeure* events are rare and unpredictable, it is difficult to speculate future situations where a U.S. vessel would need to request *force majeure*. The economic effects from these revisions would likely be positive for vessels that are granted an exemption due to *force majeure*, as the proposed measure is expected to provide relief to U.S. purse seine vessels that experience an unforeseen circumstance and would otherwise fish fewer days in a calendar year.

Silky shark: Under the proposed action, existing silky shark regulations would continue to be in effect without change. The existing regulations prohibit retention on longline vessels and purse seine vessels, with an exception for silky shark that is not seen during fishing operations and is delivered into the vessel hold. U.S. longline vessels fishing in the IATTC Convention Area, whether under the Hawaii Longline Limited Access Permit or the Pacific HMS permit, do not target silky shark and all those caught incidentally, are released. For purse seine vessels, the proposed action would continue to allow exemptions for silky shark not seen during fishing operations and delivered into the vessel hold. In these situations, the silky shark may be stored on board and landed, but

the vessel owner or operator must surrender the whole silky shark to the responsible government authority present at the point of landing. If the governmental authorities are unavailable, the whole silky shark surrendered must not be sold or bartered but must be donated for purposes of domestic human consumption. It is not expected that the proposed rule would change the vessels' fishing practices, due to the continuation of existing regulations. The proposed action is not expected to reduce profitability; thus, compliance with this measure is not expected to impose negative economic impacts on U.S. longline vessels fishing in the IATTC Convention Area.

In summary, the proposed action is not expected to substantially change the typical fishing practices of affected vessels. Any impact to the income of U.S. vessels is expected to be minor. Therefore, NMFS has determined that the action is not expected to have a significant economic impact on a substantial number of small entities, or a disproportionate economic impact on the small entities relative to the large entities. Therefore, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: March 22, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart C is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. Revise § 300.20 to read as follows:

§ 300.20 Purpose and scope.

(a) The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950, as amended, (Act) and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement recommendations and other decisions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the IATTC Convention Area. The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, may promulgate such regulations as may be necessary to carry out the U.S. international obligations under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), and the Act, including recommendations and other decisions adopted by the IATTC.

(b) This subpart does not apply to:

- (1) any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes; or
- (2) any person or vessel engaged in sport fishing for personal use.

3. Amend § 300.21 by revising “Active FAD” and “Fish aggregating device (FAD)” and adding definitions, in alphabetical order, for “Activation of a satellite buoy,” “Deactivation of a satellite buoy,” “Reactivation of a satellite buoy,” “Satellite buoy,” and “Signal loss,” to read as follows:

§ 300.21 Definitions.

* * * * *

Active FAD means a FAD deployed at sea where activation of the satellite buoy has occurred and the satellite buoy is transmitting its location and is being tracked by the vessel owner or operator. A FAD shall be considered an Active FAD unless/until the vessel owner or operator is no longer tracking its location and the vessel owner or operator notifies the IATTC that the FAD is deactivated.

Activation of a satellite buoy means the act of initializing network service for receiving the satellite buoy’s position. Activation is done by the buoy supplier company at the request of the vessel owner or manager. Following activation, the vessel owner pays for the communication service. The buoy can be transmitting or not, depending if it has been switched on.

* * * * *

Deactivation of a satellite buoy means the act of canceling network service for receiving the satellite buoy’s position. Deactivation is done by the buoy supplier company at the request of the vessel owner or manager. Following deactivation, the communication service is no longer paid for and the buoy stops transmitting.

* * * * *

Fish aggregating device (FAD) means anchored, drifting, floating or submerged objects deployed and/or tracked by vessels, including through the use of radio and/or satellite buoys, for the purpose of aggregating target tuna species for purse-seine fishing operations.

* * * * *

Reactivation of a satellite buoy means the act of re-initializing network service for transmission of a satellite buoy's position after deactivation. The procedure is the same as the one to be followed for activation of a satellite buoy.

* * * * *

Satellite buoy means a buoy that uses a satellite network service to indicate its geographical position and is compliant with requirements in § 300.28(a) of this section to be clearly marked with a unique identification code.

* * * * *

Signal loss means the situation in which, without any intervention of the owner, operator, or manager, a satellite buoy cannot be located by the owner on a monitoring device. The main causes of signal loss are buoy retrieved by another vessel or person (at-sea or on-shore), FAD sinking, and buoy failure.

* * * * *

4. Revise § 300.22 to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) *Logbooks* - (1) *General logbook reporting*. The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel.

(2) *Longline and other non-purse seine logbooks*. Maintaining and submitting any logbook required by existing state or federal regulation will be sufficient to comply with paragraph (a)(1) of this section.

(3) *Purse seine logbooks*. For purse seine vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the

log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC will be sufficient to comply with this paragraph (a)(3) and with paragraph (a)(1) of this section, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less, maintaining and submitting any logbook required by existing state or federal regulation will be sufficient to comply with paragraph (a)(1) of this section.

(b) *Whale shark encirclement reporting.* The owner and operator of a purse seine fishing vessel of the United States that encircles a whale shark (*Rhincodon typus*) while commercially fishing in the Convention Area must ensure that the incident is recorded on the log that is required by paragraphs (a)(1) and (a)(3) of this section. The log must include the following information: The number of individual whale sharks with which the vessel interacted, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark upon release (including whether the animal was released alive, but subsequently died), as may be further specified by NMFS.

(c) *FAD reporting - (1) Reporting on FAD interactions.* U.S. purse seine vessel operators must provide the observer with the FAD identification code and, as appropriate, the other information in the FAD interaction standard format provided by the HMS Branch. U.S. vessel owners and operators, without an observer onboard, must ensure that any interaction or activity with a FAD is reported using a FAD interaction standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

(2) *Reporting on Active FADs.* U.S. vessel owners and operators must record or maintain daily information on buoy location and acoustic data for all Active FADs that have been deployed in the water in the IATTC Convention Area and report that information to the IATTC, using a format and address provided by the HMS Branch. Daily information on buoy location must include date, time, buoy identifier, latitude, longitude, IMO number, and speed. Daily acoustic data will vary depending on the buoy company, but must include company, buoy identifier, latitude, longitude, date, time, and available layers of data. Further instructions on reporting data specific for different buoys companies are available in a compliance guide. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(3) *Deactivation of Active FADs.* U.S. vessel owners and operators must report any deactivation of a satellite buoy, including the reason for deactivation, date, latitude, longitude, buoy identifier, and speed. This information must be reported to the IATTC, using a format and address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(4) *Reactivation of Active FADs.* U.S. vessel owners and operators must report any remote reactivation of a satellite buoy, including the reason for remote reactivation, date, latitude, longitude, buoy identifier, speed. This information must be reported to the IATTC, using a format and address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(d) *Cannery reporting.* U.S. vessel owners and operators must report processing plant data for fish caught in the IATTC Convention Area to the IATTC, and also make the data available to NMFS upon request, no later than 10 days after completion of

unloading and the last day of grading by size. Instructions for reporting are available in a compliance guide.

4. Revise § 300.23 to read as follows:

§ 300.23 IATTC Regional Vessel Register.

(a) *IATTC Regional Vessel Register (Vessel Register)*. The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (a)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (c)(2) of this section in order to fish for tuna and tuna-like species in the Convention Area.

(1) *Exception from requirement for inclusion on the Vessel Register*. Once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean may exercise an option to fish with purse seine gear to target tuna in the Convention Area without the vessel's capacity counted towards the cumulative carrying capacity described under paragraph (c)(1)(i) of this section. This exception is for a single fishing trip that does not exceed 90 days in duration. At any time during the calendar year, a vessel exercising this exception shall follow the procedures, where applicable, described in paragraph (c) of this section. No more than 32 of such trips are allowed each calendar year. After the commencement of the 32nd such trip, the Regional Administrator shall announce, in the Federal Register and by other appropriate means, that no more such trips are allowed for the remainder of the calendar year. Under § 216.24(b)(6)(iii)(C) of this title, vessel assessment fees must be paid for vessels exercising this option.

(2) *Requirements for inclusion of purse seine vessels on the Vessel Register*.

Inclusion on the tuna purse seine portion of the Vessel Register is valid through

December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(b) Vessel information to be collected for the Vessel Register.

(1) Required information. Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; IMO number (if applicable); vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons and cubic meters; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(2) IMO numbers. For the purpose of this section, an “IMO number” is the unique six or seven digit number issued for a vessel under the ship identification number scheme adopted by the International Maritime Organization (IMO) and managed by the entity identified by the IMO (currently IHS Maritime) and is also known as a Lloyd's Register number.

(3) Requirements for IMO numbers. The owner of a fishing vessel of the United States used for commercial fishing for tuna and tuna-like species in the IATTC Convention Area shall ensure that an IMO number has been issued for the vessel if the

vessel's Certificate of Documentation issued under 46 CFR part 67 indicates that the vessel's total internal volume is 100 gross register tons or greater or 100 gross tonnage or greater. In addition, the owner of a fishing vessel of the United States engaging in fishing activities for tuna or tuna-like species in the IATTC Convention Area, and for which a high seas fishing permit under § 300.333 is required, shall ensure that an IMO number has been issued for the vessel if the vessel's total internal volume is less than 100 gross registered tons or less than 100 gross tons, but equal to or greater than 12 meters in overall length, as indicated in the vessel's Certificate of Documentation issued under 46 CFR part 67 or State documentation. A vessel owner may request that an IMO number be issued for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit, <https://imonumbers.lrfairplay.com/>.

(4) *Request for exemption.* In the event that a fishing vessel owner, after following the instructions given by the designated manager of the IMO ship identification number scheme, is unable to ensure that an IMO number is issued for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Regional Administrator. The request must be sent by mail to NMFS HMS Branch, West Coast Region, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by email to wcr.hms@noaa.gov, and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(5) *Exemption process.* Upon receipt of a request for an exemption under paragraph (b)(4) of this section, the Regional Administrator will, to the extent they determine appropriate, assist the fishing vessel owner in requesting an IMO number. If the Regional Administrator determines that the fishing vessel owner has followed all appropriate procedures and yet is unable to obtain an IMO number for the fishing vessel,

they will issue an exemption from the requirements of paragraph (b)(3) of this section for the vessel and its owner and notify the owner of the exemption. The Regional Administrator may limit the duration of the exemption. The Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (b)(3) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

(c) *Purse seine Vessel Register listing.* For a tuna purse seine vessel to be listed on the Vessel Register and to be categorized as either “active” or “inactive” in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under § 216.24(b) of this title and under paragraphs (c)(2) and (3) of this section as well as payment of the vessel assessment fee, where applicable, to the IATTC.

(1) *Restrictions for purse seine vessels.* The following restrictions apply:

(i) The cumulative carrying capacity of all tuna purse seine vessels on the Vessel Register may not exceed 31,866 cubic meters in a given year; and

(ii) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title.

(2) *Active status for purse seine vessels.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit

application and payment of the permit application fee and submit to the IATTC payment of the vessel assessment fee.

(i) To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b) of this section, and the owner or managing owner's signature, business email address, and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the IATTC.

(ii) The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and payment confirmation of the vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active.

(3) Inactive status for purse seine vessels.

(i) From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the IATTC payment

of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(ii) To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the HMS Branch a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive.

(iii) At any time during the year, a vessel owner or managing owner may request that a tuna purse seine vessel qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as inactive for the remainder of the calendar year, provided the cumulative carrying capacity described in (c)(1)(i) of this section is not exceeded. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the HMS Branch written notification as described in (c)(3)(i) of this section. Payment of the vessel assessment fee is not required for such vessels.

(iv) The vessel owner or managing owner of a purse seine vessel listed as active on the Vessel Register that has sunk may request the vessel be listed as sunk and

categorized as inactive on the Vessel Register. To request the vessel be listed as sunk and categorized as inactive on the Vessel Register, the vessel owner or managing owner must submit to the HMS Branch written notification within 30 days of the vessel's sinking. Written notification shall include, but is not limited to, the vessel name, date of sinking, registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. For subsequent calendar years, vessel assessment fee payment shall be made as described in paragraph (c)(3) of this section.

(v) A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020, requesting active status will be prioritized according to the hierarchy under paragraph (e) of this section. A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020, will be removed from the Vessel Register as described in paragraph (f)(9) of this section.

(d) Frivolous requests for purse seine vessels on the Vessel Register.

(1) Except as described under paragraph (d)(2) of this section, requests for active status under paragraph (c)(2) of this section will be considered frivolous if, for a vessel categorized as active on the Vessel Register in a given calendar year:

(i) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(ii) The vessel did not fish for tuna at all in the Convention Area in that same year.

(2) Requests described under paragraph (d)(1) of this section will not be considered frivolous requests if:

(i) The vessel's catch pattern fell within the criteria described in paragraph (d)(1) of this section as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator; or

(ii) The vessel's carrying capacity is 400 st (362.8 mt) or less and there was at least one documented landing of tuna caught by the vessel in the Convention Area in the calendar year prior to the year in which the request is made and through November 15 of the year of the request, unless the vessel was not able to make a landing as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator.

(iii) The vessel was listed as inactive before January 21, 2020, and has not been listed as inactive for more than two consecutive calendar years since January 21, 2020.

(e) *Listing hierarchy for purse seine vessels on the Vessel Register.* Requests for active status and inactive status will be prioritized according to the following hierarchy:

(1) Requests received for replacement vessels with a carrying capacity equal to or less than a vessel removed from the Vessel Register under a request described in paragraph (j) of this section;

(2) Requests received for vessels that were categorized as active in the previous year, unless the request was determined to be frivolous by the Regional Administrator under paragraph (c)(2) of this section;

(3) Requests received for vessels that were categorized as inactive under paragraph (c)(3) of this section in the previous year, unless that vessel has been listed as inactive or sunk under paragraph (c)(3) of this section for more than 2 consecutive calendar years after January 21, 2020;

(4) Requests for vessels not described in paragraphs (e)(1) through (3) of this section, and requests, if applicable, by replacement vessels for the portion of the carrying capacity greater than the amount authorized to the vessel that was replaced under

paragraph (j) of this section, will be prioritized on a first-come, first-served basis according to the date and time of receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(5) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (d) of this section or that have been listed as inactive or sunk as described in paragraph (c)(3) of this section for more than two consecutive calendar years after January 21, 2020.

(f) *Removal from the Vessel Register.* A vessel may be removed from the Vessel Register by the Regional Administrator under any of the following circumstances:

(1) The vessel has sunk and the vessel owner or managing owner has not submitted written notification as described in paragraph (c)(3)(iv) of this section.

(2) By written request of the vessel's owner or managing owner.

(3) Following a final agency action on a permit sanction for a violation.

(4) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation.

(5) The U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

(i) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or

(ii) The documentation for the vessel has been or will be deleted for any reason.

(6) The vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation.

(7) For tuna purse seine vessels, by written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (i) of this section.

(8) For tuna purse seine vessels, the request for active status on the Vessel Register has been determined to be a frivolous request.

(9) For tuna purse seine vessels, the vessel has been listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020.

(g) *Process for removal from the Vessel Register.* When a vessel is removed from the Vessel Register under paragraph (f) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal and the reasons therefore. For a removal from the Vessel Register under § 300.30(f)(3), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register under § 300.30(f)(4), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

(h) *Procedures for replacing purse seine vessels removed from the Vessel Register.*

(1) A purse seine vessel that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the cumulative carrying capacity described in (c)(1)(i) of this section is not exceeded. The owner or managing owner of a purse seine vessel of more than 400 st (362.8 mt) carrying capacity must pay the vessel assessment fee associated with inactive status. The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less must submit written notification as described in paragraph (c)(3) of this section.

(2) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel or vessels removed from active or inactive status under paragraph (f) of this section, provided the total carrying capacity described in (c)(1)(i) of

this section is not exceeded and the owner submits a complete request under paragraph (h)(4) of this section.

(3) Notification of available capacity after a purse seine vessel has been removed from the Vessel Register will be conducted as follows:

(i) After a purse seine vessel categorized as active or inactive is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active or inactive list of the Vessel Register.

(ii) When a purse seine vessel categorized as active or inactive on the Vessel Register has been removed from the Vessel Register under the procedures described in paragraph (j) of this section, the Regional Administrator will not make available the capacity of the vessel removed from the Vessel Register, and will reserve that capacity for a replacement vessel for a period of 2 years from the date of notification described in (j)(4) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register at the same carrying capacity or less as that of the vessel it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity amount for the vessel being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available under the procedures described in (e)(4) of this section.

(4) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels

removed from the Vessel Register by submitting to the HMS Branch written notification as described in paragraph (c)(2) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee to the IATTC within 10 business days after submission of the written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register at the same carrying capacity or less as that of the vessel or vessels it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its capacity to no more than the previously authorized carrying capacity for the vessel or vessels being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(5) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee to the IATTC and payment of the permit application fee to the Regional Administrator within 10 business days after submission of the vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register at the same carrying capacity as that of the vessel or vessels it is replacing. If the replacement vessel has a carrying capacity greater

than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity for the vessel or vessels being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available. The replacement vessel will also only be eligible to be categorized as active on the Vessel Register if the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(6) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(i) *Transfers of purse seine vessels to a foreign registry and flag.* The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted to the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

(j) Aging fleet provision for purse seine vessels.

(1) The vessel owner or managing owner of a purse seine vessel listed as active or inactive on the Vessel Register may request to replace the current vessel with a new or used vessel without losing the vessel's placement in the hierarchy of requests for active status as described in paragraph (e) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register at the same carrying capacity or less as that of the vessel it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity be allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available at the time the request to be listed as active on the Vessel Register is received by the Regional Administrator, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity of the vessel being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available under the procedures described in paragraph (e)(4) of this section. This aging fleet provision may be used only once per vessel by the vessel owner or managing owner.

(2) A request made under this provision may include a request to remove the vessel from the Vessel Register. The Regional Administrator will ensure the amount of carrying capacity equal to or less of the vessel being replaced will be available for the replacement vessel for up to 2 years from the date of notification described in paragraph (j)(4) of this section.

(3) To request a vessel be replaced under this provision, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, the vessel name and registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business

telephone and fax numbers, and the expected month and year the replacement vessel will be ready to fish in the Convention Area.

(4) Within 30 days of receiving each request described in (j)(3) of this section, the Regional Administrator shall notify the vessel owner or managing owner in writing whether the request has been accepted or denied, and the reasons therefore.

5. Amend § 300.24 by revising paragraphs (n), (ff), (kk), and (ll) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(n) Use a fishing vessel of class size 4-6 to fish with purse seine gear in the IATTC Convention Area in contravention of § 300.25(e).

* * * * *

(ff) Fail to provide information to an observer or record or report data on FADs as required in § 300.22(c).

* * * * *

(kk) When deploying a FAD, activate the satellite buoy attached to a FAD in a location other than on a purse seine vessel at sea as required in § 300.28(b).

(ll) Fail to activate a satellite buoy before deploying a FAD at sea as required in § 300.28(b).

* * * * *

6. Amend § 300.25 by revising paragraphs (a)(2) and (e) as follows:

§ 300.25 Fisheries management.

(a) * * *

(2) There is a limit of 750 metric tons of bigeye tuna that may be caught by longline gear in the Convention Area by U.S. commercial fishing vessels that are over 24

meters in overall length. The catch limit within a calendar year is subject to increase if the United States receives a transfer of catch limit from another IATTC member or cooperating non-member, per paragraph (a)(5) of this section.

* * * * *

(e) *Purse seine closures - (1) 72-day closure.* A U.S. commercial purse seine fishing vessel that is of class size 4-6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days during one of the following two periods:

(i) From 0000 hours Coordinated Universal Time (UTC) July 29 to 2400 hours UTC October 8, or

(ii) From 0000 hours UTC November 9 to 2400 hours UTC January 19 of the following year.

(2) *Additional closure days for vessels that exceed bigeye tuna catch levels.* In 2023 and 2024, U.S. purse seine vessels that exceed a certain annual catch level of bigeye tuna must increase the number of closure days they observe in the following year, as specified in the following table.

Table 1 to paragraph (e)(2)

Catch level (mt) exceeded	Additional closure days observed
1,200	10
1,500	13
1,800	16
2,100	19
2,400	22

(i) The additional days of closure must be added to one of the two closure periods indicated in paragraph (e)(1). For vessels observing the first closure period, the additional

days must be added at the beginning of the closure period. For vessels observing the second closure period, the additional days must be added to the end of the closure period. The HMS Branch will confirm the determination of annual catch levels for U.S. purse vessels based on information provided by the IATTC and notify any U.S. vessel that exceeds a given catch level.

(ii) [Reserved]

(3) *Choice of closure period.* A vessel owner, manager, or association representative of a vessel that is subject to the requirements of paragraph (e)(1) of this section must provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (e)(1) of this section their vessel will observe in that year. This written notification must be submitted by email to wcr.hms@noaa.gov and must be received no later than May 15 of the relevant calendar year. The written notification must include the vessel name and registration number, the closure dates that will be observed by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) *Default closure period.* If written notification is not submitted per paragraph (e)(3) of this section for a vessel subject to the requirements under paragraph (e)(1) of this section, that vessel must observe the second closure period under paragraph (e)(1)(ii) of this section.

(5) *Request for exemption due to force majeure.* A vessel may request a reduced closure period if a *force majeure* event renders the vessel unable to proceed to sea outside one of the two closure periods specified in paragraph (e)(1) of this section for at least 75 continuous days. A vessel will only be eligible for an exemption due to *force majeure* if the vessel was disabled in the course of fishing operations by mechanical and/or structural failure, fire, or explosion.

(i) A request for an exemption due to *force majeure* must be made to the Highly Migratory Species Branch no later than 20 calendar days after the end of the period of inactivity due to *force majeure*. The request must be made via email to wcr.hms@noaa.gov or by contacting the HMS Branch. The request must include the name and official number of the vessel, vessel owner or manager's name and signature, and evidence to support the request, which may include but is not limited to photographs, repair bills, certificates of departure from port, and in the case of a marine casualty, a completed copy of the U.S. Coast Guard Form CG-2692A (See 46 CFR 4.05-10).

(ii) If accepted by the Sustainable Fisheries Division, the request for exemption due to *force majeure* will be forwarded to the IATTC Director. If declined by the Sustainable Fisheries Division, the applicant may provide additional information or documentation to the Sustainable Fisheries Division with a request that the initial decision be reconsidered by email to wcr.hms@noaa.gov, or by contacting the HMS Branch Chief.

(iii) If the request for an exemption due to *force majeure* is accepted by the IATTC, the vessel may observe a reduced closure period of 40 consecutive days in the same year during which the *force majeure* event occurred, in one of the two closure periods described in paragraph (e)(1) of this section. After a request is accepted by the IATTC, the vessel owner or manager must specify to the HMS Branch which 40 consecutive days the vessel will observe for their reduced closure period.

(iv) If the request for an exemption due to *force majeure* is accepted by the IATTC and the vessel has already observed a closure period described in paragraph (e)(1) of this section in the same year during which the *force majeure* event occurred, the vessel may observe a reduced closure period of 40 consecutive days the following year, in one of the two closure periods described in paragraph (e)(1) of this section.

(v) An exemption due to *force majeure* will only apply to the 72-day closure period required under paragraph (e)(1) of this section. Vessels that are both granted a reduced 40-day initial closure period due to *force majeure* under paragraph (e)(5) and required to observe additional closure days for exceeding bigeye tuna catch levels under paragraph (e)(2) must observe the reduced closure period consecutively with the additional closure days by adding the additional closure days to either the beginning of the first reduced closure period or the end of the second reduced closure period.

(vi) Any purse seine vessel for which a *force majeure* request is accepted by the IATTC must carry an observer aboard authorized pursuant to the International Agreement on the International Dolphin Conservation Program, unless that vessel has been granted an exemption from the Regional Administrator.

(6) *31-day area closure.* A U.S. fishing vessel of class size 4-6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9 to 2400 hours on November 8 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W longitude and bounded at the north and south by 4° N and 3° S latitude.

(7) *Requirement to stow gear.* At all times while a vessel is in a time/area closed period established under paragraphs (e)(1) or (6) of this section, unless fishing under the exception under paragraph (e)(5) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

* * * * *

7. Amend § 300.27 by revising paragraph (e) to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(e) *Silky shark restrictions for purse seine and longline vessels.* The crew, operator, and owner of a commercial purse seine or longline fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the IATTC Convention Area, except as provided in paragraph (f) of this section.

* * * * *

8. Amend § 300.28 by:

- a) Revising paragraphs (b) and (c),
- b) Redesignating paragraphs (d)-(e) as paragraphs (f)-(g),
- c) Adding new paragraphs (d) and (e), and,
- d) Revising the introductory text to newly redesignated paragraph (g).

The revisions and additions read as follows:

§ 300.28 FAD restrictions.

* * * * *

(b) *Activating FADs for purse seine vessels.* When deploying a FAD in the IATTC Convention Area, a vessel owner, operator, or crew must activate the satellite buoy while the FAD is onboard the purse seine vessel and before it is deployed in the water.

(c) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of purse-seine vessels with the following well volume in cubic meters (m³) must not have more than the following number of Active FADs per vessel in the IATTC Convention Area at any one time during the following years.

Well volume (m ³)	Active FAD limit
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For 2022 calendar year	
1,200 or more	400
426-1,199	270
213-425	110
0-212	66
For 2023 calendar year	
1,200 or more	340
426-1,199	255
213-425	105
0-212	64
For 2024 calendar year and beyond	
1,200 or more	340
426-1,199	210
213-425	85
0-212	50

(d) *Restrictions on satellite buoy deactivations.* A vessel owner or operator that deactivates a satellite buoy attached to a FAD must comply with the reporting

requirements for buoy deactivations in § 300.22 (c)(3) of this subpart. A U.S. vessel owner or operator shall only deactivate a satellite buoy attached to a FAD that was activated in the IATTC Convention Area in the following circumstances:

(1) Complete loss of signal reception;

(2) Beaching;

(3) Appropriation of a FAD by a third party;

(4) Temporarily during a selected closure period;

(5) For being outside of the area between the meridians 150° W and 100° W, and the parallels 8° N and 10°S; the area between the meridian 100° W and the coast of the American continent and the parallels 5° N and 15°S; or

(6) Transfer of ownership.

(e) *Restrictions on satellite buoy reactivations.* A vessel owner or operator that reactivates a satellite buoy must comply with the reporting requirements for satellite buoy reactivations in § 300.22 (c)(4) of this subpart. A U.S. vessel owner or operator shall only remotely reactivate a satellite buoy at sea that was activated in the IATTC Convention Area in the following circumstances:

(1) To assist in the recovery of a beached FAD;

(2) After a temporary deactivation during the closure period; or

(3) Transfer of ownership while the FAD is at sea.

* * * * *

(g) *FAD design requirements to reduce entanglements*. All FADs onboard or deployed in the IATTC Convention Area by U.S. vessel owners, operators, or crew, must comply with the following design requirements:

* * * * *

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